

REMARKS

Claims 1-15 are pending in this application. Claims 1-8, 10-11, and 15 have been rejected under 35 U.S.C. § 102(b), and Claims 9-14 have been rejected under 35 U.S.C. § 103(a). Claims 1-7 and 11-14 have been amended, and Claims 8-10 and 15 have been canceled. In addition, new Claims 16-24 have been added.

In view of the foregoing amendments and the remarks that follow, applicant respectfully submits that all claims are now in condition for allowance.

Rejections Under 35 U.S.C. § 102(b)

Claims 1-7 and 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,568,866, issued to Grosskopf et al. (hereinafter "Grosskopf"). In addition, Claims 1, 7-8, 10-11, and 15 stand rejected as being anticipated by U.S. Patent No. 4,804,101, issued to Heath (hereinafter "Heath").

Anticipation requires the presence, in a single prior art reference, of disclosure of each and every element of a claimed invention. Because both Grosskopf and Heath fail to teach, or even suggest, each and every element of the claimed invention, neither reference is anticipatory.

The following analysis focuses on independent Claim 1. Applicant notes that independent Claim 15 has been canceled. Independent Claim 1, as presently amended, recites a food container assembly. The food container assembly includes a product container for a food product, a dental cleaning device carried by the product container, and a food product at least partially disposed within the product container.

Regarding the first rejection of Claims 1-7 and 15 as being anticipated by Grosskopf, applicant submits that Grosskopf fails to teach or suggest each and every limitation of the claimed invention. Grosskopf generally describes a sample package for carrying fluid or powder samples, as well as dental floss, granules, and tablets (see Grosskopf, Col. 1, lines 44-49, and

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Col. 3, lines 49-58), which can be attached by adhesive to a card (such as a mailing card) or product packaging. The Examiner states that the product packaging of Grosskopf can be inherently used as a food package product. Applicant respectfully disagrees.

Applicant submits that Grosskopf fails to teach or suggest a food container assembly having a food product at least partially disposed within the product container, as recited in amended Claim 1. In fact, Grosskopf teaches away from such a limitation, because it would not be sensible to include food with a sample package adhered to a mailing card or other packaging, as such food would spoil in the mail or on the magazine rack.

Regarding the rejection of Claims 1, 7-8, 10-11, and 15 as being anticipated by Heath, applicant submits that Heath also fails to teach or suggest each and every limitation of the claimed invention, as presently amended. Heath generally describes a smokeless tobacco container assembly including a separate compartment for dental cleaning devices, such as toothpicks, dental floss, and a mirror (see Heath, Col. 2, lines 8-18).

Applicant submits that Heath also fails to teach or suggest a food container assembly having a food product at least partially disposed within the product container, as recited in amended Claim 1. Specifically, applicant submits that smokeless tobacco is not "food."

For these reasons, Claim 1 and the claims depending therefrom are not anticipated by Grosskopf or Heath, and therefore should be allowable.

Rejections Under 35 U.S.C. § 103(a)

Claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as obvious over Grosskopf. In addition, Claims 9 and 12-14 stand rejected under 35 U.S.C. § 103(a) as obvious over Grosskopf in view of U.S. Patent No. 5,524,764, issued to Kaufman et al. (hereinafter "Kaufman"). Claims 9-14 all depend from Claim 1; therefore, the following analysis focuses on Claim 1.

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To establish a case of obviousness, the prior art references must teach or suggest all of the claim limitations; there must be some suggestion or motivation, either in the references or in the knowledge of one skilled in the art, to modify the reference or to combine the reference teachings; and there must be a reasonable expectation of success.

Regarding the rejection of Claims 10 and 11 as obvious over Grosskopf, applicant respectfully submits that the claimed invention is not obvious over Grosskopf for the same reasons detailed above regarding the anticipation rejection. In addition, applicant submits that there would be no suggestion or motivation, either in the references or in the knowledge of one having skill in art, to modify Grosskopf to include food. As mentioned above, Grosskopf teaches away from such a limitation, because it would not be sensible to include food with a sample package adhered to a mailing card or other packaging, as such food would spoil in the mail or on the magazine rack.

Regarding the rejection of Claims 9 and 12-14 as obvious over Grosskopf in view of Kaufman, applicant submits that Kaufman fails to cure the deficiencies of Grosskopf. Kaufman generally describes a compact portable package 36 containing dental hygiene items for convenient placement, for example, in a wallet 38. Thus, neither Grosskopf nor Kaufman, either alone or in combination, teaches or suggests a food container assembly having a food product at least partially disposed within the product container, as recited in amended Claim 1.

For these reasons, Claim 1, and the claims depending therefrom, are not obvious in view of Grosskopf or Kaufman, and therefore should be allowable.

New Claims 16-24

New Claims 16-24 further define the present invention. Applicant submits that these new claims are also in condition for allowance.

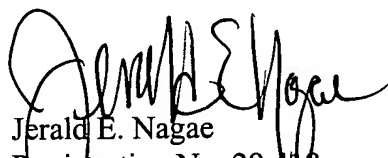
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CONCLUSION

In view of the foregoing amendments and remarks, applicant respectfully requests reconsideration and allowance of all claims. The Examiner is invited to telephone the undersigned attorney if there are any remaining issues.

Respectfully submitted,

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